

Effective 5/12/2015

63N-6-406 Certificates and contingent tax credits.

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board, in consultation with the State Tax Commission, shall make rules governing the application for, form, issuance, transfer, and redemption of certificates.
- (2) The board's issuance of certificates and related contingent tax credits to designated investors is subject to the following:
 - (a) the aggregate outstanding certificates may not exceed a total of:
 - (i) \$130,000,000 of contingent tax credits used as collateral or a guarantee on loans for the debt-based financing of investments in the Utah fund of funds initiated before July 1, 2014, or \$120,000,000 of contingent tax credits for a loan refinanced using debt- or equity-based financing as described in Subsection (2)(e); and
 - (ii) \$100,000,000 used as an incentive for equity investments in the Utah fund of funds;
 - (b) the board shall issue a certificate contemporaneously with a debt-based investment in the Utah fund of funds by a designated investor, including a refinanced loan as described in Subsection (2)(e);
 - (c) the board shall issue contingent tax credits in a manner that not more than \$20,000,000 of contingent tax credits for each \$100,000,000 increment of contingent tax credits may be redeemable in a fiscal year;
 - (d) the credits are certifiable if there are insufficient funds in the redemption reserve to make a cash redemption and the board does not exercise its other options under Subsection 63N-6-408(3)(b);
 - (e) the board may not issue additional certificates as collateral or a guarantee on a loan for the debt-based financing of investments in the Utah fund of funds that is initiated after July 1, 2014, except for a loan refinanced using debt- or equity-based financing on or after July 1, 2014, that was originated before July 1, 2014; and
 - (f) after July 1, 2014, the board may issue certificates that represent no more than 100% of the principal of each equity investment in the Utah fund of funds.
- (3) For an equity-based private investment initiated on or after July 1, 2015, the applicable designated investor may apply for a tax credit if the following criteria are met:
 - (a) the Utah fund of funds has received payment from the designated investor as set forth in the investor's agreement with the Utah fund of funds;
 - (b) the designated investor has not received a return of the initial equity investment in the time established in the investor's agreement with the Utah fund of funds;
 - (c) there are insufficient funds in the redemption reserve to make a cash redemption and the board does not exercise its other options under Subsection 63N-6-408(3)(b); and
 - (d) there is a demonstrated positive impact on economic development in the state related to the Utah fund of funds' investments or the success of the corporation's economic development plan in the state, which shall be measured by:
 - (i) a method to calculate the impact on economic development in the state, established by rule; and
 - (ii) the corporation, with approval of the board, engaging an independent third party to evaluate the Utah fund of funds and determine the economic impact of the Utah fund of funds and the activities of the corporation as further described in Section 63N-6-203 and board rules.
- (4) In determining the maximum limits in Subsections (2)(a)(i) and (ii) and the \$20,000,000 limitation for each \$100,000,000 increment of contingent tax credits in Subsection (2)(b):
 - (a) the board shall use the cumulative amount of scheduled aggregate returns on certificates issued by the board to designated investors;

- (b) certificates and related contingent tax credits that have expired may not be included; and
 - (c) certificates and related contingent tax credits that have been redeemed shall be included only to the extent of tax credits actually allowed.
- (5) Contingent tax credits are subject to the following:
- (a) a contingent tax credit may not be redeemed except by a designated investor in accordance with the terms of a certificate from the board;
 - (b) a contingent tax credit may not be redeemed prior to the time the Utah fund of funds receives full payment from the designated investor for the certificate as established in the agreement with the Utah fund of funds;
 - (c) a contingent tax credit shall be claimed for a tax year that begins during the calendar year maturity date stated on the certificate;
 - (d) an investor who redeems a certificate and the related contingent tax credit shall allocate the amount of the contingent tax credit to the taxpayers of the investor based on the taxpayer's pro rata share of the investor's earnings; and
 - (e) a contingent tax credit shall be claimed as a refundable credit.
- (6) In calculating the amount of a contingent tax credit:
- (a) the board shall certify a contingent tax credit only if the actual return, or payment of principal and interest for a loan initiated before July 1, 2014, including a loan refinanced on or after July 1, 2014, that was originated before July 1, 2014, to the designated investor is less than that targeted at the issuance of the certificate;
 - (b) the amount of the contingent tax credit for a designated investor with an equity interest may not exceed the difference between the actual principal investment of the designated investor in the Utah fund of funds and the aggregate actual return received by the designated investor and any predecessor in interest of the initial equity investment and interest on the initial equity investment;
 - (c) the rates, whether fixed rates or variable rates, shall be determined by a formula stipulated in the certificate; and
 - (d) the amount of the contingent tax credit for a designated investor with an outstanding loan to the Utah fund of funds initiated before July 1, 2014, including a loan refinanced on or after July 1, 2014, that was originated before July 1, 2014, may be equal to no more than the amount of any principal, interest, or interest equivalent unpaid at the redemption of the loan or other obligation, as stipulated in the certificate.
- (7) The board shall clearly indicate on the certificate:
- (a) the targeted return on the invested capital, if the private investment is an equity interest;
 - (b) the payment schedule of principal, interest, or interest equivalent, if the private investment is a loan initiated before July 1, 2014, including a loan refinanced on or after July 1, 2014, that was originated before July 1, 2014;
 - (c) the amount of the initial private investment;
 - (d) the calculation formula for determining the scheduled aggregate return on the initial equity investment, if applicable; and
 - (e) the calculation formula for determining the amount of the contingent tax credit that may be claimed.
- (8) Once a certificate is issued, a certificate:
- (a) is binding on the board; and
 - (b) may not be modified, terminated, or rescinded.
- (9) Funds invested by a designated investor for a certificate shall be paid to the corporation for placement in the Utah fund of funds.

(10) The State Tax Commission may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and in consultation with the board, make rules to help implement this section.

Renumbered and Amended by Chapter 283, 2015 General Session

Amended by Chapter 420, 2015 General Session